



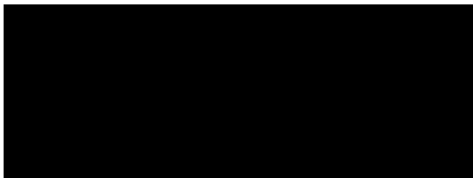
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: [Redacted] Office: Texas Service Center

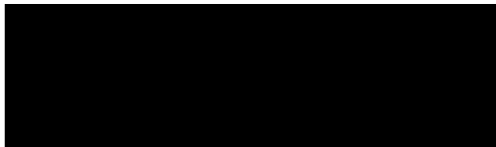
Date: 1 - MAR 2002

IN RE: Petitioner:
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:



Administrative Appeals Office

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Texas Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. A subsequent motion to reopen was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on a motion to reopen and/or reconsider. The motion will be dismissed.

The petitioner is an individual seeking classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to be employed as a monk by a United States Buddhist temple at a salary of \$500 per month.

The petitioner is a native and citizen of Laos who was last admitted to the United States as a B-2 visitor on July 13, 1993. The record reflects that he has resided beyond any authorized stay and has continued to reside in the United States in an unlawful status.

The petitioner filed a Form I-360 petition for special immigrant classification on August 25, 1997 seeking employment as a monk with the Phoutha Pasaram Buddhist Temple in Crescent City, Florida. The petition was denied on its merits in a decision dated August 20, 1998. Citing contradictions in the documentation of the beneficiary's identity, the center director found that the evidence was insufficient to establish that the petitioner was, in fact, a qualified Buddhist monk. The director also found that the petitioner failed to submit the documentation required by the regulations for the temple to demonstrate its financial ability to pay the proffered wage. The director also noted that the petitioner failed to submit tax returns as proof of his employment history in the United States.

The petitioner filed a timely appeal from the decision and furnished an appellate brief. The Associate Commissioner, by and through the Administrative Appeals Office (AAO), reviewed the evidence and found that the petitioner had failed to overcome the grounds for denial. The appeal was dismissed in a decision dated January 2, 2001.

The petitioner then filed a motion to reopen the decision of the AAO which was dismissed on March 12, 2001 for failing to meet the applicable requirements of a motion to reopen as set forth at 8 C.F.R. 103.5(a)(4).

Counsel now files a Form I-290B as an "Appeal to the Commissioner," or alternately a motion to reopen/reconsider stating that an additional brief would be submitted within thirty days. As of this date, however, no additional brief has been received.

According to 8 C.F.R. 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. In order to prevail on a motion to reopen, the petitioner must establish that the new facts and/or evidence presented were unavailable at the time the prior decision was issued. Id.

According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. In order to prevail on a motion for reconsideration, a petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." Id.

According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

Here, there is no assertion that the petitioner is submitting documentation that was previously unavailable or that the preceding decision of March 12, 2001 was an incorrect application of law. Counsel essentially seeks a readjudication of the underlying petition and a waiver of the thirty-day appeal period. There is no provision for such an adjudication on a motion to reopen or a motion to reconsider. Clearly, there is no provision for an "appeal" from the denial of a motion.

Counsel has failed to establish that this action meets the applicable requirements of a motion and it must be dismissed.

It is noted that the petitioner is free to file a new petition without prejudice.

ORDER: The motion is dismissed.